IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4606 of 2007()

CRIME NO.106/05 OF VAZHAKKULAM POLICE STATION

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PETITIONER/ACCUSED

SAJITH, AGED 30 YEARS, S/O.SUDHAKARAN,
NACHIKKATTU, CHERAI P.O., PALLIPPURAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
(CRIME NO.106 OF 2005 OF VAZHAKKULAM POLICE
STATION).

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4606 of 2007

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Dated this the 31st day of July, 2007

O R D E R

Application for anticipatory bail. Petitioner is the first accused and he faces allegations under Section 420 I.P.C. The crime was registered as early as in 2005. The petitioner was allegedly the Managing Director of the Southern Himalaya Chitties & Pvt. Ltd. The crux of the allegations is that he induced subscribers to pay money, but did not return the money to the subscribers at the appropriate time. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations even if accepted reveal only a failure/inability to discharge a civil liability. The learned Prosecutor submits that the case diary suggests that the chitty business has been conducted by the said company without the requisite registration under law. In these circumstances the very running of the chitty company amount to a crime under Section 420 I.P.C., it is urged.

3. The learned counsel for the petitioner counters the said argument and submits that the company has the requisite registration,

though not in Kerala. The counsel submits that given some time the petitioner shall be able to produce the relevant documents to confirm that the company has the requisite registration, though not in Kerala, in accordance with law. I am satisfied that the petitioner can be given an opportunity to surrender before the learned Magistrate and seek regular bail. The petitioner can produce whatever materials he has to show that the requisite registration has been taken, before the learned Magistrate. I am satisfied that subject to appropriate conditions directions under Section 438 Cr.P.C. can be issued in favour of the petitioner.

4. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on or before 10.8.2007 at 11 a.m. He may file application for bail after giving sufficient prior notice to the learned Prosecutor in charge of the case. The learned Magistrate shall consider the petitioner's application for bail on merits, in accordance with law and expeditiously - on the date of surrender itself. Needless to say, the police shall also be entitled to raise their objections and seek relief, if any necessary, from the learned Magistrate.

Such request, if any, of the police shall also be considered and disposed of by the learned Magistrate expeditiously.

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 10.8.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(c) If the petitioner were arrested prior to his surrender on 10.8.2006 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 10.8.2007.

(R. BASANT)
Judge

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